SUPREME COURT, U. S.

No. 87

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL-CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC CO., RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

IRVING ABRAMSON
1126 16th Street, N.W.
Washington, D. C.
Attorneys for Petitioner.

BENJAMIN C. SIGAL,
Of Counsel.

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vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC COMPANY, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, IUE-AFL-CIO, prays that a writ of certiorari issue to review final orders of the United States Court of Appeals for the 2nd Circuit which (1) dismissed a petition for review filed by IUE-AFL-CIO, hereinafter sometimes

called the Union, and (2) denied the petitioner leave to intervene in an enforcement proceeding filed by the National Labor Relations Board, Respondent.

OPINION BELOW

The decision and order of the National Labor Relations Board is reported at 150 NLRB No. 36. The Court below dismissed the Union's petition for review, and denied it leave to intervene in the Board's enforcement proceedings, on April 1, 1965, without opinion in either action.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

When the National Labor Relations Board upholds, in part, a union's unfair labor practice charges against an employer, after proceedings in which the union actively participates as a party, but the union believes that the Board has improperly failed to find certain violations of the National Labor Relations Act, as amended, and that the order of the Board fails to provide a satisfactory remedy, may the union (a) be denied review of the order of the Board, and (b) be denied intervention in enforcement proceedings brought by the Board wherein it will be determined how extensively the employer has violated federal law and what the scope of the remedy should be.

STATUTE INVOLVED

29 U.S.C. §160(f) provides, in part,

> "Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides

> or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside . . . (T)he court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; . . ."

STATEMENT

On January 18, 1965, this Court granted certiorari in *International Union v. Scofield, et al.* No. 650, October Term 1964, to review the question whether the successful *defending party* below the Board may be denied intervention in the judicial review proceeding brought by the charging party.

On March 29, 1965, this Court granted certiorari in *International Union v. Fafnir Bearing Co. et al,* No. 883, October Term 1964, to review the question whether the successful *charging party* before the Board may be denied intervention in the judicial review proceeding brought by the defending party.

Certiorari is sought in this case on 2 related questions: (a) whether the *charging party,* which was in part, but not entirely, successful before the Board, may be denied review of the final order of the Board despite the fact the Board denied part of the relief which that party had sought; and (b) whether the same charging party may be denied intervention in the enforcement proceeding brought by the Board, against the charged party, based on the same order of the Board.

On the basis of charges filed by the Union alleging that the General Electric Co. had violated Sections 8(a)(1), 8(a)(3), and 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. § 158(a)(1), 158(a)(3) and 158 (a)(5), by refusing to bargain in good faith and refusing to reinstate certain striking employees on request, the General Counsel of the Board issued a complaint against the Company. Pursuant to Section 102.8, Subpart A, of the Board's Rules and Regulations, the Union was a party to all subsequent Board proceedings, and participated on a parity with the Company and the Board's General Counsel.

On April 1, 1963, the Trial Examiner found the Company had violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the Act, and recommended issuance of an order against the Company. He failed, however, to make certain requested findings of violations, and failed to include a number of provisions in the proposed order which the Union had requested. Oral argument on exceptions filed by the Union, Company, and General Counsel was heard by the full Board on May 7, 1964.

On December 16, 1964, the Board issued its Decision and Order, in which the Board adopted the Intermediate Report and Recommended Order of the Trial Examiner and rejected all the Union's exceptions to the Report. To obtain review of these matters, the Union filed a petition to review the Board's Order in the United States Court of Appeals for the District of Columbia Circuit on December 16, 1964. The Board *admitted,* in its Answer to that petition, that the Union is an aggrieved person within the meaning of Section 10(f) of the Act. The Company did not move to intervene in that proceeding to seek dismissal of the Union's petition for review.

The Company filed a petition for review of the Board's

Order in the United States Court of Appeals for the Seventh Circuit on December 16, 1964. That Court transferred the Company's petition to the Court below on February 18, 1965. On March 12, 1965, pursuant to a motion to transfer filed by the Board in the United States Court of Appeals for the District of Columbia Circuit, that Court transferred the Union's petition for review to the Court below.

On February 15, 1965, the Board filed in the Court below a petition for enforcement of its Order against the Company, and subsequently moved for consolidation therewith the Union and Company petitions for review.

On March 18, 1965, the Union filed in the Court below a Motion for Leave to Intervene in the Board's Petition for Enforcement to which was attached a copy of the Union's exceptions to the Trial Examiner's Intermediate Report.

The Board, in its Response to the Union's motion, dated March 25, 1965, *consented* to the intervention, contrary to its usual practice. e.g. *International Union v. Fafnir, supra.*

The Company opposed the Union's motion, and also moved for dismissal of the Union's petition for review.

The Court below denied the Union's motion for leave to intervene, with leave to file a brief *amicus* at the time the Company filed its brief, and also dismissed the Union's petition for review because it was not an aggrieved party. Both actions were taken without opinion. The Court below consequently permitted consolidation of the Board's petition for enforcement only with the Company's petition for review.

Certiorari is sought to resolve important federal questions closely related to the issues pending before this Court in *International Union v. Scofield, supra,* and *International*

Union v. Fafnir, supra, and involving conflicting administration of justice in federal courts.

REASONS FOR GRANTING THE WRIT

This case presents 2 important issues relating to the orderly administration of justice in the federal courts:

(a) The important issue of whether a charging party, claiming to be aggrieved by a final order of the Board denying in part the relief sought, and whose aggrievement is admitted by the Board, may be denied judicial review of the proceeding.

(b) The recurrent and important intervention issue similar to the issue pending in *International Union v. Fafnir* No. 883, certiorari granted March 29, 1965.

1. *Closely Related Issues Pending.*

In *Fafnir* the question is whether the charging party before the Board may be denied intervention in the judicial review of the Board's decision sought by the defending party. In the present case, one question is whether the charging party before the Board may be denied intervention in the Board's petition for enforcement. There are two additional factors present, namely (a) the charging party contends that there should be additional findings of violations of the Act by the Company, and that the Board's order should be modified in specified details in order to effectuate the policy of the Act; (b) that the Board has consented to intervention by the charging party.

In *International Union v. Scofield, supra,* certiorari granted January 18, 1965, the question presented is whether a *charged party* before the Board may be denied intervention in the judicial review of the Board's decision.

The second question presented by this case is whether a *charging party* may seek review of a Board decision when

it claims that *part* of the relief it has requested has been denied by the Board, and the Board admits that the charging party is an aggrieved person.

This Court has deemed appropriate its concurrent review of closely related questions. *Brown v. Board of Education* 344 U.S. 1, 3; *Local Union No. 189 v. Jewel Tea Co.*, 379 U.S. 813.

2. *Important Questions Presented*

(a) The right of a charging party to seek judicial review of a Board order, as a "person aggrieved" within the meaning of Section 10(f) of the Act, if the Board refuses any of the relief requested by the charging party, has rarely heretofore been successfully challenged. *Albrecht v. NLRB*, 181 F.2d 652 (C.A. 7, 1950). Although a great number of petitions for review have been filed by charging parties complaining of partial denial of relief sought, e.g. *Local 833, UAW v. NLRB*, 300 F.2d 699 (C.A.D.C. 1962), our research has failed to discover a single instance, prior to the action of the Court below, in which such petitions for review have been dismissed on motion on the ground that the charging party was not a person aggrieved.

(b) While most circuit courts have denied *intervention* by the charging party in judicial review of a Board decision, several circuit courts have allowed it. See e.g. *Local 761, IUE v. NLRB*, 278 F.2d 282 (C.A.D.C. 1960); *Kearney & Trecker Corp. v. NLRB*, 210 F.2d 852 (C.A. 7, 1954); *Donnelly Garment Co. v. NLRB*, 151 F.2d 854 (C.A. 8, 1945).

The questions here presented are of no less importance to the orderly administration of justice in federal courts than the questions this Court has agreed to review in No. 650 and No. 883, October Term, 1964. The need for such orderly administration fully warants this Court's review.

See *Western Pacific R.R. Corp. v. Western Pacific R.R. Co.* 345 U.S. 247, 260.

3. *Intent of the Act is frustrated.*

(a) In denying the Union a right to review of the Board's decision, to the extent that the Board denied the relief which the Union sought, the Court below frustrated the intent of Congress and ignored prior decisions of this Court.

Section 10(f) of the Act is explicit in providing that "*Any* person aggrieved by a final order of the Board granting or *denying* in whole or *in part* the relief sought may obtain a review of such order . . ." (Emphasis added.) There is no limitation with respect to how large a part of the relief sought must be denied, or the nature of the part denied. For example, in *Perfection Mattress & Spring Co. v. NLRB* per curiam interim order of May 4, 1961, reported at 48 LRRM 2167 (C.A. 5), decision on merits at 321 F.2d 612, the petitioner, the charging party in the Board proceedings, sought only a more detailed order describing the acts of picketing to be prohibited, which the Board denied. That court held that such denial of relief expressly sought by the petitioner made it an aggrieved person within the contemplation of the law, and denied the motion to dismiss. In the present case, the charging parties request for a more specific order by the Board was only part of the relief requested, and denied.

To the extent that the Union, in its petition for review, seeks a modification of the Board's order, it desires an opportunity to *contest* the Board's order, not to *enforce* it. Cf. *Amalgamated Workers v. Consolidated Edison Co.*, 309 U.S. 261, 266 (1940); *American Newspaper Publishers*

Ass'n v. NLRB, 345 U.S. 100 (1953); *Albrecht v. NLRB*, *supra*.

It is evident that the Union in this case, in filing its petition for review, is only seeking to follow the procedure which both this Court, and the circuit courts, have indicated is provided to it by Section 10(f) of the Act. In view of the explicit language of that Section, denial of the Union's right of review is a clear violation of the Act.

The assertion of the Court below that the Union was not aggrieved is incomprehensible. Since no opinion was written, it must be assumed that the Court below accepted all or part of the assertions made in the Company's motion to dismiss with respect to the Union's aggrievement. The Company contends that the Union complains about the form, not the substance, of the Board's order, and is, therefore, not aggrieved. Even a casual examination of the Union's exceptions to the Trial Examiner's Recommended Order, which was adopted without change by the Board, reveals that the Company's claim is a gross misrepresentation. The Union complains specifically about the failure of the Board to find certain conduct of the Company violative of the Act, and also complains about the inadequacy of the Board's orders in specific respects. A summary of the principal items of relief requested by the Union, and denied by the Board (see Charging Party's Exceptions to Intermediate Report, attached to Motion to Intervene) is as follows:

1. That the Company's conduct at the bargaining table, as well as its communications program and related conduct away from the bargaining table in connection with the negotiations, when taken separately, each support a finding that the Company refused to bargain in good faith, in violation of the Act;

2. That the recommended order of the Trial Examiner, adopted by the Board, was inadequate and deficient in that it failed to order the Company to cease and desist from refusing to bargain

(a) by refusing to make every reasonable effort to reconcile the difference between it and the Union;

(b) by proposing changes in employee benefits on a take-it-or-leave-it basis during the term of a national collective bargaining agreement, and refusing to negotiate with respect to such proposed changes;

(c) by intervening in, and attempting to influence the conduct of, votes relating to negotiations, and other internal affairs of the Union, and calculated to undermine the Union's status as collective bargaining representative;

(d) by communicating directly with its employees, with respect to wages, hours, and other terms and conditions of employment, and discussing pending contract proposals with them, in a way calculated to undermine the Union and derogate from its status as collective bargaining representative;

(e) by threatening loss of employment, and otherwise coercing its employees, to induce them to withdraw their support of the Union's contract proposals and to support its own contract proposals, and threatening its employees with loss of employment and otherwise coercing them unless they abandon strike activity; and

(f) by soliciting and promising benefits to strikers to procure their abandonment of their concerted activities and return to work.

Moreover, even if the Union requested no more than an order which spelled out prohibited conduct more clearly than the present order, denial of that request would constitute aggrievement, *Perfection Mattress & Spring Co. v. NLRB, supra.*

b. On the right of the charging party to intervention in the Board's proceeding for enforcement, there appears no need for further argument to support this aspect of this petition for certiorari, in view of the Court's grant of certiorari in *International Union v. Fafnir Bearing Co., supra.*

CONCLUSION

It is submitted that the writ should be granted.

Respectfully submitted,

IRVING ABRAMSON
1126 16th Street, N.W.
Washington, D. C.
Attorneys for Petitioner.

BENJAMIN C. SIGAL,
Of Counsel.

(4780-3)

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 1108

INTERNATIONAL UNION OF ELECTRICAL, RADIO, AND MACHINE WORKERS, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD AND GENERAL ELECTRIC CO.

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Petitioner, International Union of Electrical Workers, seeks review of orders of the court of appeals which (1) dismissed its petition to review an order of the National Labor Relations Board and (2) denied it intervention in a proceeding to enforce that order brought by the Board against the General Electric Co. The underlying facts are as follows:

Upon charges filed by petitioner Union, the Board found that the Company refused to bargain in good faith with the Union, thereby violating Sections 8(a) (5) and (1) of the National Labor Relations Act.[1]

[1] The Board based its holding "upon our review of the [Company's] entire course of conduct, its failure to furnish relevant information, its attempts to deal separately with locals and to bypass the national bargaining representative, the man-

The Board ordered the Company, *inter alia*, to cease and desist from refusing to bargain in good faith with the Union, from refusing to furnish the Union with relevant information, from attempting to bargain directly with locals of the Union, and from in any like or related manner interfering with its employees in the exercise of their bargaining rights. The Board overruled the request of the Union, contained in its exceptions to the trial examiner's report (see Pet. 9–10), that certain specific acts of the Company should themselves be held to constitute unfair labor practices, and that the prohibitions of the order should be enlarged and made more specific. 150 NLRB No. 36.

Both the Company and the Union petitioned for review of the Board's order under Section 10(f) of the Act (29 U.S.C. 160(f)), and the Board filed a cross-petition for enforcement under Section 10(e) (29 U.S.C. 160(e)).[2] The Union, in its petition (par.

ner of its presentation of the accident insurance proposal, the disparagement of the Union as bargaining representative by the communication program, its conduct of the negotiations themselves, and its attitude or approach as revealed by all these factors." 150 NLRB No. 36, slip dec., p. 6.

[2] The Union filed its petition in the Court of Appeals for the District of Columbia Circuit, and the company field its petition in the Seventh Circuit. Unable to determine which of these proceedings was first instituted, within the meaning of 28 U.S.C. 2112(a), the Board filed its petition in the Second Circuit, the place where the unfair labor practices occurred, and requested the other circuits to transfer the other petitions there. Both the District of Columbia and the Seventh Circuits made such transfers.

3), asserted that it was a "person aggrieved"[3] because:

> The findings and order of the Board, to the extent that they failed to find certain violations of the Act, as amended, and to order the Company to cease and desist therefrom and to take additional affirmative action, are contrary to substantial evidence on the record before it, and applicable law.

In its answer to the Union petition, the Board, although denying the allegation of error, conceded that the Union was a "person aggrieved" within the meaning of Section 10(f) (Ans., par. 2).

The Board moved to consolidate the three proceedings. The Union, in turn, moved to intervene in the Board's enforcement proceeding against the Company. Although the Board did not oppose such intervention, the Company did oppose. In addition, the Company moved to intervene in the Union's review proceeding, urging that it should be dismissed because the Union's claim that it was aggrieved by the Board's order was frivolous.

The court of appeals granted the Company's motion to intervene in the Union's review proceeding and dismissed that proceeding (Pet. 15). The court denied the Union's motion to intervene in the Board's enforcement proceeding against the Company, but granted the Union leave to file a brief *amicus curiae* (Pet. 14).

---

[3] Section 10(f) provides that:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order * * *."

The first question presented is whether the charging party before the Board is entitled to intervene in a judicial proceeding brought by the Board to enforce an unfair labor practice order. This is the same issue that is before the Court in *United Automobile Workers* v. *Fafnir Bearing Co.*, No. 883, this Term, certiorari granted March 29, 1965.[5] The only difference between the cases is that in *Fafnir* the charging party was not also itself seeking review of the Board's order. In these circumstances the Court should either grant the petition on this question or hold it pending the decision in *Fafnir*.

The second question in the petition is whether, where the Board's order fails to grant some of the relief that the charging party seeks, the latter is a "person aggrieved" by the order under Section 10(f) of the Act, and entitled to seek judicial review thereof. It is doubtful, however, whether this question actually is involved in this case. The basis of the Company's motion to dismiss the Union's petition for review was not a general challenge to the standing of a charging party to contest the adequacy of the relief granted by the Board, but only the narrow claim that, on the particular facts of this case, the respects in which the Union sought to broaden the Board's decision and order were so insubstantial that the Union was not "aggrieved" by the Board's failure to do so. There can be no doubt that, if the Board fails to grant significant relief which the charging party seeks, the

[5] *United Automobile Workers* v. *Scofield*, No. 650, this Term, certiorari granted, January 18, 1965, presents the question whether the respondent before the Board is entitled to intervene in a review proceeding brought by the charging party.

latter is a "person aggrieved" who has standing to challenge the order under Section 10(f). In these circumstances, and since the court of appeals did not state the reasons for its action, it seems only reasonable to conclude that the court accepted the Company's claim that the differences between the order proposed by the Union and that entered by the Board were so insignificant that the Union was not really "aggrieved." Although the Board believes that the court may have erred in concluding that the Union was not "aggrieved," the court's decision appears to rest on the facts of the particular case, and thus presents no issue warranting review by this Court.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
DOMINICK L. MANOLI,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
LAURENCE S. GOLD,
Attorney,
National Labor Relations Board.
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Petitioner,

—VS.—

NATIONAL LABOR RELATIONS BOARD,

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INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—VS.—

NATIONAL LABOR RELATIONS BOARD and GENERAL ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, GENERAL ELECTRIC COMPANY, IN OPPOSITION

DAVID L. BENETAR
Attorney for Respondent,
General Electric Company
420 Lexington Avenue
New York, N. Y. 10017

DAVID L. BENETAR
THOMAS F. HILBERT, JR.
SANFORD BROWDE
Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1108

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

Petitioner,

—VS.—

NATIONAL LABOR RELATIONS BOARD,

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INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO,

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—VS.—

NATIONAL LABOR RELATIONS BOARD and GENERAL ELECTRIC COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT, GENERAL ELECTRIC COMPANY, IN OPPOSITION

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent, General Electric Company, opposes the petitioner's request for a writ of certiorari to review the orders of the United States Court of Appeals for the Second Circuit: 1) denying the Union's motion to intervene in an enforcement proceeding instituted by the National Labor Relations Board against General Electric Company and 2) dismissing a Union petition for review of a National Labor Relations Board's order finding the General Electric Company guilty of violating the National Labor Relations Act as amended.

I

The motion by the Union to intervene in the enforcement proceedings instituted by the National Labor Relations Board against General Electric Company, which proceeding seeks to compel the Company to comply with an order finding it guilty of violating the National Labor Relations Act as amended, is plainly an attempt by a private party to share the Board's responsibility in the enforcement of "public rights" (*Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485 (CA 7, 1942)).

The National Labor Relations Board itself has opposed intervention where an unfair labor practice has been found and the charging party seeks to intervene in a court proceeding instituted by the respondent's petition to review the order issued against it. As the Board stated in footnote 2 of its memorandum to this Court in *UAW* v. *Scofield, et al.*, No. 650, October Term 1964:

> "For the charging party does not stand to incur any liability, and its only purpose is to help the Board per-

> form a function, i.e., uphold its order, which the act confers exclusively upon the Board. In this situation intervention has usually been denied, but the charging party has been permitted to participate as *amicus curiae*."

To the extent that petitioner claims that the National Labor Relations Board's order should be phrased differently than it was, the Union is attempting to pursue a purely private objective—not the general vindication of a public right (*Amalgamated Utility Workers* v. *Consolidated Edison*, 309 U. S. 261 (1940)). Intervention by the Union would thus present a conflict as to who is actually in control of the conduct of the proceedings brought to enforce the order of the administrative agency against the Company. It would interfere with the exclusive jurisdiction which Congress has vested in the National Labor Relations Board to prevent and redress unfair labor practices (Section 10(a) of the National Labor Relations Act as amended, 29 U. S. C. A. 160(a)), and would give the Union a right as a petitioner to act independently and possibly contrary to the judgment of the National Labor Relations Board (*Penello* v. *Burlington Industries Inc.*, 54 L. R. R. M. 2165 (D. C. W. D. Va., 1963)). Even the petitioner recognizes that the Board's usual practice is to oppose intervention of the nature sought here (Petition, p. 5). The Board's position below on this point, however, was at variance with this usual practice.

The decision of the Court of Appeals for the Second Circuit in *International Union* v. *Fafnir Bearing Co. et al.*, 339 F. 2d 801 (1964), *cert. granted*, No. 833, October Term 1964, held that the charging party therein was not entitled to intervene *as a matter of right* in the judicial proceeding to review the Board's order against the respondent. That

holding emphasized the discretionary quality of the Court's function in this area. Surely, in the case at bar, the Union's request for leave to intervene in the enforcement proceeding brought by the Board against the Company herein called for the exercise of the court's discretion, which should not be disturbed by granting this writ (See *Moore's Federal Practice, Second Edition,* ¶24.10; *Carpenter* v. *Wabash Ry. Co.,* 103 F. 2d 996 (CA 8, 1939), *rev'd on other grounds,* 309 U. S. 23 (1940)).

This Court has said that "to permit a multitude of [permissive] interventions may result in accumulating proofs and arguments without assisting the Court" (*Allen Calculators Inc.* v. *National Cash Register Co.,* 322 U. S. 137, 141-42 (1944)). Judge Wyzanski has referred to this feature of the question in the following language:

> "It is easy enough to see what are the arguments against intervention where, as here, the intervenor merely underlines issues of law already raised by the primary parties. Additional parties always take additional time. Even if they have no witnesses of their own, they are the source of additional questions, objectives, *briefs, arguments,* motions and the like which tend to make the proceeding a Donnybrook Fair. Where he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief *amicus curiae* and not by intervention." (Italics ours) (*Crosby Steam Gage and Valve Co.* v. *Manning, Maxwell and Moore, Inc.,* 51 F. Supp. 972, 973 (D. Mass., 1943)).

In the case at bar, intervention by the union would have a highly undesirable and prejudicial effect on the rights of the Company and would merely complicate the proceedings before the court in its deliberations (See Fed. R. Civ.

P. 24(b)). It would permit the Union to submit briefs covering the entire subject matter of this case without limit, as indeed the Union was allowed to do before the Trial Examiner of the Board and before the Board itself. Thus, before the administrative tribunal, the Company was confronted with a main brief before the Trial Examiner of 396 pages submitted by the General Counsel for the Board and of 214 pages submitted by the Union. General Counsel's reply brief before the Trial Examiner was 52 pages and the Union's reply brief was 51 pages.

The Union does not deny that its objective in this case, apart from the matter of the form of the order against the Company, is identical with the objective of the Board. Yet if the Union were granted the right to intervene, as now sought, it would be accorded a co-equal status with that of the National Labor Relations Board and granted the unrestricted right to pursue its private interests. In this manner, the Company would be "whipsawed" by the adverse position of the Union pursuing its private interests and that of the National Labor Relations Board, pursuing its public interests.

This inequitable result would work an injustice on the Company by permitting separate and independent briefs in support of the Board's decision, and permitting separate and independent oral arguments before the Court. It was within the province of the Court of Appeals for the Second Circuit to weigh these practical considerations and to deny the Union's motion for leave to intervene in the National Labor Relations Board's enforcement petition against the respondent Company.

II

The Union petition to this Court raises the additional question as to its status as a petitioner in seeking to review the National Labor Relations Board's order against respondent Company. The essence of the Union's claim to aggrieved status is that the *form* of the Board's order is not couched in the language suggested by the Union. No important question of federal law is involved in this issue.

The substance of the Board's order, however, found that the Company had violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act as amended. Reading from petitioner's own brief (pp. 9-10), it is evident that the Union essentially seeks compliance with the Board's order, rather than reversal thereof.

This Court has stated that a proceeding brought to review a Board order under Section 10(f) of the Act "seeks not to require compliance with the Board's order but to overturn it" (*Amalgamated Utility Workers* v. *Consolidated Edison Company, supra,* at 266). If this were not the rule, litigants would be in a position to require complete court review of almost any order merely by including in the record an extravagant or unwarranted demand, and predicating its claim to being aggrieved on the refusal of its demand. This is what is being attempted here and plainly the attempt is based on a transparent pretext. For that reason, the Union petition for review was properly dismissed and this Court should not grant a writ directed to reviewing that dismissal.

CONCLUSION

For the reasons set forth above, the petition for writ of certiorari herein should be denied.

Respectfully submitted,

DAVID L. BENETAR
Attorney for Respondent,
General Electric Company
420 Lexington Avenue
New York, N. Y. 10017

DAVID L. BENETAR
THOMAS F. HILBERT, JR.
SANFORD BROWDE
Of Counsel

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